Benteler Industries, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–38517

August 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Pursuant to a charge filed on May 9, 1996, the General Counsel of the National Labor Relations Board issued an amended complaint and notice of hearing on July 8, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 7–RC–20265. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the amended complaint.

On August 6, 1996, the General Counsel filed a Motion for Summary Judgment. On August 8, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 22, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits that it has refused to bargain, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business at 320 Hall Street, S.W., Grand Rapids, Michigan, has been engaged in the manufacture and nonretail sale of automotive metal components.

During the calendar year ending December 31, 1995, the Respondent, in conducting its operations, sold and shipped from its Hall Street facility, products valued in excess of $50,000 directly to points outside of the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held about February 16 and 17, 1995, the Union was certified on March 20, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, including automation technicians, robotic technicians, floor inspectors, layout inspectors, the quality assurance secretary, materials records clerks, shipping and receiving employees and clerks, and leadpersons, employed by Respondent at its 320 Hall Street, S.W., Grand Rapids, Michigan facility and at its warehouse facility located at 500 44th Street, S.W., Wyoming, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act and any employees of temporary work entities.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About April 9, 1996, the Union sent a letter to the Respondent requesting the Respondent to recognize and bargain with it as the exclusive bargaining representative of the unit, and about May 3, 1996, the Respondent sent a letter to the Union refusing to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By refusing on and after May 3, 1996, to recognize and bargain with the Union as the exclusive collective-

bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Benteler Industries, Inc., Grand Rapids and Wyoming, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees including automation technicians, robotic technicians, floor inspectors, layout inspectors, the quality assurance secretary, materials records clerks, shipping and receiving employees and clerks, and leadpersons, employed by Respondent at its 320 Hall Street, S.W., Grand Rapids, Michigan facility and at its warehouse facility located at 500 44th Street, S.W., Wyoming, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act and any employees of temporary work entities.

(b) Within 14 days after service by the Region, post at its facilities in Grand Rapids and Wyoming, Michigan, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 9, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 29, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Sarah M. Fox,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees, including automation technicians, robotic technicians, floor inspectors, layout inspectors, the quality assurance secretary, materials records clerks, shipping and receiving employees and clerks, and leadpersons, employed by us at our 320 Hall Street, S.W., Grand Rapids, Michigan facility and at our warehouse facility located at 500 44th Street, S.W., Wyoming, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act and any employees of temporary work entities.

BENTELER INDUSTRIES, INC.